

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NINTENDO OF AMERICA INC.,

Plaintiff,

V.

DOES 1-20, d/b/a, ANXCHIP.COM,
AXIOGAME.COM, FLASHCARDA.COM,
MOD3DSCARDS.COM, NX-CARD.COM,
SXFLASHCARD.COM, TXSWITCH.COM,
and USACHIPSS.COM,

Defendants.

NO. 2:20-cv-00738-TSZ

**DECLARATION OF JACQUELINE N.
MCMAHON**

Introduction

1. I am over the age of eighteen and not a party to the above-captioned action. I have personal knowledge of the facts set forth below. If called as a witness, I would testify as follows:

2. I am employed as Director of Client Relations and Investigations at Marksmen. Marksmen is a company that assists brand owners protecting their intellectual property, including trademarks, domains and uncovering counterfeit operations. Marksmen has over twenty years of investigation experience in the intellectual property industry. I have four years

1 of experience managing investigations, which includes investigations into the video game and
 2 online hacking communities.
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4 3. Marksmen was retained by Nintendo of America Inc. (“Nintendo”) to investigate
 5 the individuals behind the websites ANXCHIP.COM, AXIOGAME.COM,
 6 FLASHCARDA.COM, MOD3DSCARDS.COM, NX-CARD.COM, SXFLASHCARD.COM,
 7 TXSWITCH.COM, and USACHIPSS.COM. The operators of those sites are collectively
 8 referred to herein as “Defendants,” and their websites as the “Websites.”¹ The Websites sell
 9 devices to the public that they claim hack the Nintendo Switch and the Nintendo Switch Lite
 10 video game consoles. Some of the Defendants’ Websites also sell memory cards filled with
 11 video games.
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13 Investigation Into The Websites
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15 4. For 14 months, I supervised investigators that conducted an investigation of the
 16 Websites for Nintendo.
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18 5. The investigation consisted of conducting test purchases from the Websites,
 19 paying for those purchases, and corresponding with the Website operators. The investigation
 20 also consisted of researching any addresses associated with Defendants—whether on the
 21 Websites or on the shipments the investigators received from Defendants.
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23 6. As set forth fully below, none of the Websites provide any identifying
 24 information about the individuals operating them.
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26 7. In addition, most of the Websites do not provide any physical address associated
 27 with them, and for those that at some point have purported to provide physical addresses, we
 28 have concluded based on experience and investigation that the addresses provided are fake. By
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42 ¹ Since the Complaint has been filed, five of the Defendants have already moved URLs (known
 43 as “domain-hopping”), and those Defendants are now operating at different URLs. Reference to
 44 Defendants or the domain names in the caption above should be read to encompass both the
 45 original URLs and any new URLs.

1 “fake,” I mean either that the address does not exist, or that the individuals or entities associated
 2 with that address do not appear to be the Defendants or associated with the Defendants.
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4 8. Investigators under my supervision conducted test purchases from each of the
 5 Websites to attempt to determine whether the shipping materials or any other documentation
 6 provided along with the shipment could generate a reliable address for the operators of the
 7 Websites, and we have concluded that they do not.
 8

9 9. In addition, none of the Defendants list addresses on their Websites that appear to
 10 be real or connected to the Defendants or their operations.
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12 10. The following paragraphs contain information from the Websites at the above-
 13 captioned domain names.
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15 11. AXIOGAME.COM, ANXCHIP.COM, MOD3DSCARDS.COM, and
 16 TXSWITCH.COM do not list any address on their Websites.
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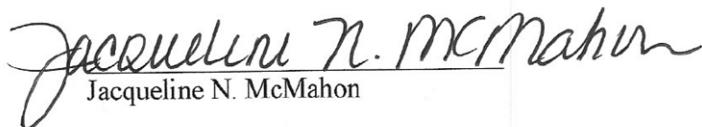
18 12. FLASHCARDA.COM lists its location as “Williston, North Dakota 58801,”
 19 without providing a street address.
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21 13. SXFLASHCARD.COM lists its location as “43085, Columbus, USA.”
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23 14. AGRESU.COM (f/k/a NX-CARD.COM) and NERGED.COM (f/k/a
 24 USACHIPSS.COM) list addresses in Utah and North Dakota, respectively, but investigators
 25 under my supervision have investigated both of those addresses and have concluded that there is
 26 no connection between those addresses and Defendants or their Websites. Specifically, we have
 27 conducted a supplemental targeted investigation into these two addresses—on top of the robust,
 28 multi-month investigation into all Defendants. As part of that investigation, investigators under
 29 my supervision reviewed and analyzed property records, business records, business reports,
 30 social media reports, and other public records which allowed Marksmen to conclude that there is
 31 no connection between the individual who live at the properties and Defendants and the
 32 operation of the Websites.
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I declare under penalty of perjury that the foregoing is true and correct.

Executed: June 3, 2020


Jacqueline N. McMahon